

## Department of State

## § 127.11

for this reason shall be published periodically in the FEDERAL REGISTER. Debarment in such cases is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, that established guilt beyond a reasonable doubt in accordance with due process. The procedures of part 128 of this subchapter are not applicable in such cases.

(d) *Appeals.* Any person who is ineligible pursuant to paragraph (c) of this section may appeal to the Under Secretary of State for International Security Affairs for reconsideration of the ineligibility determination. The procedures specified in § 128.13 of this subchapter are applicable in such appeals.

### § 127.8 Interim suspension.

(a) The Director of the Office of Defense Trade Controls is authorized to order the interim suspension of any person when the Director believes that grounds for debarment (as defined in § 127.6 of this part) exist and where and to the extent the Director finds that interim suspension is reasonably necessary to protect world peace or the security or foreign policy of the United States. The interim suspension orders prohibit that person from participating directly or indirectly in the export of any defense article or defense service for which a license or approval is required by this subchapter. The suspended person shall be notified in writing as provided in § 127.6(c) of this part (statutory debarment) or § 128.3 of this subchapter (administrative debarment), whichever is appropriate. In both cases, a copy of the interim suspension order will be served upon that person in the same manner as provided in § 128.3 of this subchapter. The interim suspension order may be made immediately effective, without prior notice. The order will state the relevant facts, the grounds for issuance of the order, and describe the nature and duration of the interim suspension. No person may be suspended for a period exceeding 60 days unless proceedings under § 127.6(c) of this part or under part 128 of this subchapter, or criminal proceedings, are initiated before the expiration of that period.

(b) A motion or petition to vacate or modify an interim suspension order

may be filed at any time with the Under Secretary of State for International Security Affairs. After a final decision is reached, the Director of the Office of Defense Trade Controls will issue an appropriate order disposing of the motion or petition and will promptly inform the respondent accordingly.

### § 127.9 Applicability of orders.

For the purpose of preventing evasion, orders of the Assistant Secretary of State for Politico-Military Affairs, debarring a person under § 127.6 and orders of the Director, Office of Defense Trade Controls, suspending a person under § 127.7 may be made applicable to any other person who may then or thereafter (during the term of the order) be related to the debarred person by affiliation, ownership, control, position of responsibility, or other commercial connection. Appropriate notice and opportunity to respond to charges will be given.

### § 127.10 Civil penalty.

(a) The Assistant Secretary of State for Political-Military Affairs, Department of State, is authorized to impose a civil penalty in an amount not to exceed that authorized by 22 U.S.C. 2778, 2779a and 2780 for each violation of 22 U.S.C. 2778, 2779a and 2780, or any regulation, order, license or approval issued thereunder. This civil penalty may be either in addition to, or in lieu of, any other liability or penalty which may be imposed.

(b) The Office of Defense Trade Controls may make:

(1) The payment of a civil penalty under this section or

(2) The completion of any administrative action pursuant to this part 127 or 128 of this subchapter a prior condition for the issuance, restoration, or continuing validity of any export license or other approval.

[58 FR 39316, July 22, 1993, as amended at 62 FR 67276, Dec. 24, 1997]

### § 127.11 Past violations.

(a) Pursuant to section 38 of the Arms Export Control Act, licenses or other approvals may not be granted to persons who have been convicted of

violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter or who are ineligible to receive any export licenses from any agency of the U.S. government, subject to a narrowly defined statutory exception. This provision establishes a presumption of denial for licenses or other approvals involving such persons. This presumption is applied by the Office of Defense Trade Controls to all persons convicted or deemed ineligible in this manner since the effective date of the Arms Export Control Act (Pub. L. 94-329; 90 Stat. 729) (June 30, 1976).

(b) *Policy.* An exception to the policy of the Department of State to deny applications for licenses or other approvals that involve persons described in paragraph (a) of this section shall not be considered unless there are extraordinary circumstances surrounding the conviction or ineligibility to export, and only if the applicant demonstrates, to the satisfaction of the Bureau of Politico-Military Affairs, that the applicant has taken appropriate steps to mitigate any law enforcement and other legitimate concerns, and to deal with the causes that resulted in the conviction, ineligibility, or debarment. Any person described in paragraph (a) of this section who wishes to request consideration of any application must explain, in a letter to the Director, Office of Defense Trade Controls, the reasons why the application should be considered. If the Bureau of Politico-Military Affairs concludes that the application and written explanation have sufficient merit, it shall consult with the Office of the Legal Adviser and the Department of the Treasury regarding law enforcement concerns, and may also request the views of other departments, including the Department of Justice. If the Office of Defense Trade Controls does grant the license or other approval, subsequent applications from the same person need not repeat the information previously provided but should instead refer to the favorable decision.

(c) *Debarred persons.* Persons debarred pursuant to § 127.6(c) (statutory debarment) may not utilize the procedures provided by this section while the debarment is in force. Such persons may

utilize only the procedures provided by § 127.7(d) of this part.

**§ 127.12 Voluntary disclosures.**

(a) *General policy.* The Department strongly encourages the disclosure of information to the Office of Defense Trade Controls by persons, firms or any organization that believe they may have violated any export control provision of the Arms Export Control Act, or any regulations, order, license, or other authorization issued under the Arms Export Control Act. Voluntary self-disclosure may be considered a mitigating factor in determining the administrative penalties, if any, that should be imposed by the Department. Failure to report such violation(s) may result in circumstances detrimental to U.S. national security and foreign policy interests.

(b) *Limitations.* (1) The provisions of this section apply only when information is provided to the Office of Defense Trade Controls for its review in determining whether to take administrative action under part 128 of this subchapter concerning violation(s) of the export control provisions of the Arms Export Control Act and these regulations.

(2) The provisions of this section apply only when information is received by the Office of Defense Trade Controls for review prior to such time that either the Department of State or any other agency, bureau or department of the United States Government obtains knowledge of either the same or substantially similar information from another source and commenced an investigation or inquiry that involves that information, and that is intended to determine whether the Arms Export Control Act or these regulations, or any other license, order or other authorization issued under the Arms Export Control Act has been violated.

(3) It is possible that the activity in question—despite voluntary disclosure—might merit penalties, administrative actions, sanctions, or referrals to the Department of Justice for consideration as to whether criminal prosecution is warranted. In the latter case, the Office of Defense Trade Controls will notify the Department of Justice of the voluntary nature of the